



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 11, 1995

Ms. Sheree L. Rabe
Assistant City Attorney
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR95-932

Dear Ms. Rabe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33438.

You received a request for information under the Open Records Act on April 24, 1995. You requested a decision from this office on May 5, 1995. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

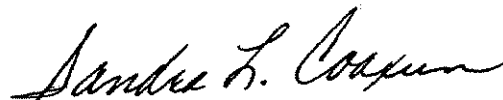
Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock* at 381.

You have not shown compelling reasons why the information at issue should not be released. In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. See also Gov't Code § 552.352 (distribution of confidential information is criminal offense). We have attached a list of common types

of confidential information. To the extent that confidential information exists in the records at issue, those portions must be withheld from the public. All remaining information in the records must be released to the requestor without delay. If you have any questions regarding this matter, please contact our office.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sandra L. Coaxum
Chief, Open Records Division

SLC/ABU/rho

Ref.: ID# 33438

Enclosures.: Submitted documents
Confidentiality list

cc: Ms. Nita Yeck
4205 Azul
Georgetown, Texas 78628
(w/o submitted documents)

PLEASE NOTE THAT THE RECORDS SUBMITTED TO THIS OFFICE FOR REVIEW MAY CONTAIN INFORMATION DEEMED CONFIDENTIAL BY LAWS NOT ADDRESSED IN THE ATTACHED LETTER RULING. YOU SHOULD THOROUGHLY EXAMINE THE RECORDS AT ISSUE TO DETERMINE WHETHER ANY OF THE PROVISIONS LISTED BELOW APPLY TO INFORMATION IN THESE RECORDS THAT MUST BE WITHHELD IN ACCORDANCE WITH STATE OR FEDERAL LAW.

WE CAUTION THAT THIS IS NOT AN EXCLUSIVE LIST OF CONFIDENTIALITY PROVISIONS AND TYPES OF INFORMATION PROTECTED FROM DISCLOSURE BY COMMON-LAW PRIVACY. THE LIST INCLUDES ONLY THOSE STATUTORY CONFIDENTIALITY PROVISIONS THAT FREQUENTLY AFFECT REQUESTS FOR RECORDS. IF YOU HAVE ANY QUESTIONS REGARDING THE APPLICABILITY OF THESE OR ANY OTHER CONFIDENTIALITY PROVISIONS, PLEASE CONSULT YOUR AGENCY ATTORNEY, WHO WILL BE MOST FAMILIAR WITH PROVISIONS THAT DIRECTLY AFFECT YOUR AGENCY.

COMMON TYPES OF INFORMATION DEEMED
CONFIDENTIAL UNDER COMMON-LAW PRIVACY
(NOTE: RIGHT OF PRIVACY LAPSES UPON DEATH)

- ☐ Information revealing details of sexual assault. Open Records Decision Nos. 440 (1986), 339 (1982).
- ☐ Prescribed drugs a person is taking. Open Records Decision No. 455 (1987).
- ☐ Information regarding drug overdoses, *acute* alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982).
- ☐ Results of psychological and IQ tests. Open Records Decision No. 600 (1992).
- ☐ Personal financial information, *e.g.*, mortgage payments, assets, bills, credit history. Open Records Decision Nos. 545 (1990), 373 (1983). *Note: Present and past salaries of public employees and applicants for public employment are not confidential.*
- ☐ Information regarding an employee's participation in a deferred compensation plan, including whether or not an employee is participating, and certain information regarding insurance, such as choice of carrier and optional coverages. Open Records Decision Nos. 600 (1992), 545 (1990).
- ☐ Allegations of sexual harassment -- If there is a clear summary of the allegations, the summary must be released but the identities of victims and witnesses must be redacted from the summary and their detailed statements must be withheld from disclosure. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). If no summary exists, detailed statements regarding the allegations must be released but identities of the witnesses and victims must be redacted from those statements.

INFORMATION COMMONLY PROTECTED BY
STATUTORY CONFIDENTIALITY

- ☐ Medical records -- "Records of the identity, diagnosis, evaluation, or treatment of a patient that are *created or maintained by a physician*." V.T.C.S. art. 4495b, § 5.08(b).
- ☐ The federal Americans With Disabilities Act (the "ADA", 42 U.S.C. §§ 12101 - 12213, may apply to employee and applicant medical information obtained by a governmental body. The ADA provides that information regarding the medical condition or history of an applicant or employee must be treated as a confidential medical record. *Id.* § 12112(c)(3)(B), (4)(C).
- ☐ Mental health records -- "Records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained" by a mental health professional. Health & Safety Code § 611.002.
- ☐ EMS records -- "Records of the identity, evaluation, or treatment of a patient" created or maintained by EMS personnel. Health & Safety Code § 773.091.
- ☐ Polygraph examination results -- Any "information acquired from a polygraph exam." V.T.C.S. art. 4413(29cc), § 19A.
- ☐ Home addresses and telephone numbers of public employees and former employees who have elected, *prior to the current open records request*, to restrict access to this information in compliance with Gov't Code § 552.024(b).
- ☐ Home addresses and telephone numbers of peace officers. Gov't Code § 552.024.
- ☐ Criminal history information -- All TCIC and NCIC information; other compilations of an individual's criminal history *except for offense for which individual is currently under the supervision of criminal justice system*.
- ☐ Records of juvenile offenders -- Fam. Code § 51.14.
- ☐ Records relating to reports of child abuse -- Fam. Code § 34.08.
- ☐ Social security numbers -- confidential only if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law that was enacted on or after October 1, 1990. 42 U.S.C. section 405(c)(2)(C)(viii)(I); *see* Open Records Decision No. 622 (1994).
- ☐ Student records -- confidential only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). Therefore, governmental bodies must withhold from education records only that information tending to identify a particular student. "Directory information," as defined at 20 U.S.C. § 1232g(a)(5)(A), must be released in its entirety.